

3823.

APPROVAL, CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION, THE TRI-COUNTY MUTUAL INSURANCE COMPANY, MAGNOLIA, OHIO.

COLUMBUS, OHIO, December 22, 1922.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—The certificate of amendment to the articles of incorporation of The Tri-County Mutual Insurance Company, of Magnolia, Ohio, is herewith returned to you with my approval endorsed thereon.

This amendment is in conformity with Sections 9593 and 9594 of the General Code.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3824.

BOARD OF EDUCATION (RURAL)—SUBMITS TO ELECTORS UNDER SECTION 4726 G. C. CENTRALIZATION—SEVENTY-FIVE PER CENT OF ELECTORS UNDER SECTION 4696 G. C. PETITION FOR TRANSFER SUBSEQUENT TO RESOLUTION OF BOARD AND PRIOR TO ELECTION—TRANSFER LEGAL—WHERE SAME CONDITIONS EXIST UNDER SECTION 4692 G. C.—TRANSFER MAY BE MADE—WHEN CENTRALIZATION OF SCHOOLS ACCOMPLISHED UNDER SECTION 4726 G. C.

1. *Where a board of education of a rural school district passed a resolution under section 4726 to submit to the electors of a school district the question of centralization of schools, and that subsequent to the passing of this resolution and prior to the election of certain electors of said rural school district signed a petition and filed the same with the county board of education asking that said territory in which the petitioners constituted seventy-five per cent. of the total number of electors therein be transferred to an adjoining school district, in accordance with the provisions of sections 4696 G. C., the county board of education may not only legally make such transfer, but is required to do so. A mere resolution by a board of education to submit to the electors of the district the question of the centralization of the schools does not give to such territory the status of centralized school territory, since the voters have not passed in the affirmative upon the question to be submitted.*

2. *Where the same conditions exist under section 4692 G. C., that is, within the county school district, the county board of education may legally make such transfer of school territory, but is not required to do so.*

3. *Centralization of schools is not wholly accomplished by a mere affirmative vote taken under section 4726 G. C. in favor of centralization, since that section*

says that following such vote the "rural board of education SHALL PROCEED AT ONCE to the centralization of schools of a rural district, and, if necessary, purchase a site or sites and erect a suitable building or buildings thereon." It is within the discretion of the board of education following a vote on centralization to decide whether such centralized school shall be operated thereafter at one site, or at more than one site.

COLUMBUS, OHIO, December 22, 1922.

Hon. VERNON M. RIEGEL, *Superintendent of Public Instruction, as Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following:

"The board of rural school district passed a resolution to submit to the electors of said district, the question of centralization of schools. Subsequent to the passing of this resolution and prior to the election, certain electors of said rural district signed a petition and filed the same with the county board of education, asking that said territory in which the petitioners constituted 75 per cent of the total number of electors therein, be transferred to an adjoining school district in accordance with the provisions of Section 4696 G. C.

Can the county board of education legally make such transfer under the conditions as above described?"

The section of the General Code under which a rural board of education submits the question of centralization of schools is section 4726, which reads in part as follows:

"A rural board of education may submit the question of centralization, and, upon the petition of not less than one-fourth of the qualified electors of such rural district, \*\*\* must submit such question to the vote of the qualified electors of such rural district at a general election or a special election called for that purpose. \*\*\* "

When a rural board of education submits the question of centralization, by certifying a request to the county board of elections to prepare the ballots for use on a day to be set by the board of education, the latter body in setting the date for the election must take cognizance of those sections of the General Code wherein the rights of absent voters must be protected and the ballots must be ready for use thirty days before the date of election; Similarly due regard should be had for the provisions of section 5080-1 G. C., which provides that organizations or committees, either in favor of or opposed to the question to be submitted, may ask for inspectors to the count on election day, but such request must be made of the county board of elections at least forty days before the day of election. Upon this question see Opinion 1787, issued by this department on January 14, 1921, and appearing at page 13, Vol. 1, Opinions of the Attorney General for 1921. The view taken in opinion 1787 was recently sustained (October 23, 1922) by the court of appeals of Stark County in the case of Board of Education vs. Board of Deputy State Supervisors and Inspectors of Elections of Stark County. Whether this decision of the

court of appeals will appear in the printed reports, this department is unable to say.

Attention is invited to this phase of the matter in order to show that considerable time must elapse between the mere passing of the resolution to submit to the electors of the school district the question of centralization and the date of election itself, and during this period the school territory in question is not centralized because the people have not voted upon the resolution and the territory is just the same as in uncentralized school territory. You indicate that following the passage of the resolution, and prior to the election, there was signed in the territory in question a petition addressed to the county board of education, asking that said territory in which the petitioners constituted seventy-five per cent. of the total of the electors therein, be transferred to an adjoining school district, in accordance with section 4696 of the General Code. This territory in question being uncentralized school territory, brings us directly to section 4696 G. C., the section of the General Code which provides for the transfer of school territory from or to an exempted village, a city school district, or a county school district, the territory of which is contiguous thereto. Thus section 4696 in its first paragraph reads as follows:

"A county board of education may, upon a petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five per cent. of the electors in the territory proposed to be transferred the county board of education shall make such transfer. A county board of education may accept a transfer of territory from any such school district and annex same to a contiguous school district of the county school district."

It will be noted above that "upon petition of seventy-five percent of the electors in the territory proposed to be transferred the county board of education shall make such transfer."

For opinions of this department upon section 4696 G. C., and having some bearing upon your question, see numbers 2917 and 3698, issued by this department during the current year of 1922. Your question is whether the county board of education can legally make such a transfer (under 4696 G. C.) under the conditions as above described, and in reply you are advised that the county board of education not only has authority to transfer school territory under 4696, where a petition has been presented, but where such petition is signed by seventy-five percent of the electors in the territory proposed to be transferred the county board of education is required to make such transfer.

Your attention is also invited to the fact that even though this resolution had been passed and an election was held and carried in the affirmative for centralization of schools in the district, the school territory, having a centralized status, could legally be transferred just the same as uncentralized school territory, where a petition of two-thirds of the qualified electors of the territory petitioning for the transfer was presented to the county board of education, as set forth in section 4727 G. C. However, in the question which you submit the element of centralization does not enter as yet for the reason that no vote in the affirmative has been had by the electors of the district and the territory is therefore uncentralized territory.

In a subsequent communication under date of December 6th you request to be

advised as to what the rule would be under a similar statement of facts, but where the transfer proposed was to be made within the same county, that is, under section 4692 G. C. rather than 4696 G. C. as appears in your original letter. In answer to this question you are advised that the county board of education may legally transfer school territory which is uncentralized under the provisions of section 4692 G. C., but the county board of education is not required to make such transfer within the county school district even though a petition of seventy-five per cent. of the electors in the territory to be transferred was presented to the board. In centralized school territory, that is, where there has been a vote had by the electors upon the question of centralization, and not a mere resolution to submit such question to the electors, transfers of such centralized school territory may be made by the county board of education when a petition of two-thirds of the qualified electors of the territory petitioning for the transfer is presented to the county board of education, but even under 4727, wherein this provision occurs, the county board of education is not required to mandatorily make such transfer.

You are therefore advised that it is the opinion of this department that where a board of education of a rural school district passed a resolution under section 4726 to submit to the electors of the school district the question of centralization of schools, and that subsequent to the passing of this resolution and prior to the election certain electors of said rural school district signed a petition and filed the same with the county board of education asking that said territory in which the petitioners constituted seventy-five per cent. of the total number of electors therein be transferred to an adjoining school district, in accordance with the provisions of section 4696 G. C., the county board of education may not only legally make such transfer, but is required to do so. A mere resolution by a board of education to submit to the electors of the district the question of the centralization of the schools does not give to such territory the status of centralized school territory, since the voters have not passed in the affirmative upon the question to be submitted.

Where the same conditions exist under section 4692 G. C., that is, within the county school district, the county board of education may legally make such transfer of school territory, but is not required to do so.

Centralization of schools is not wholly accomplished by a mere affirmative vote taken under section 4726 G. C. in favor of centralization, since that section says that following such vote the "rural board of education shall proceed at once to the centralization of schools of a rural district, and, if necessary, purchase a site or sites and erect a suitable building or buildings thereon." It is within the discretion of the board of education following a vote upon centralization to decide whether such centralized school shall be operated thereafter at one site, or at more than one site.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3825.

BOND ISSUE—UNDER SECTION 3940 G. C. A VILLAGE MAY NOT FOR PURPOSES DESIGNATED IN SECTION 3939 G. C. ISSUE BONDS SO AS TO CREATE INDEBTEDNESS IN SUM IN EXCESS OF ONE-HALF OF ONE PER CENT OF THE TOTAL OF TAX DUPLICATE OF TAXING DISTRICT IN ANY ONE FISCAL YEAR.